CMPMO No. 153 of 2007.

8.10.2007. Present: Mr. Sanjeev Kuthiala, Advocate, for the petitioner.

Mr. S.M. Wadehra, Advocate, for the respondent.

The learned trial Judge vide his order dated 22nd December, 2006 with reference to the revenue record held that even though the suit land is owned by the respondent, its nature is recorded as Gair Mumkin Rasta and Gair Mumkin Kuhal. He also held that since the petitioner and others had the easementary right by prescription, of the passage through the suit land to their factory, the application under Order 39 Rules 1 and 2 CPC for temporary injunction was not maintainable. He accordingly dismissed the application. It is in appeal against this order that the learned Additional District Judge, Fast Track Court, Solan on 18th May, 2007 allowed the application of the respondent under Order 39 Rules 1 and 2 restraining the petitioner-defendant from interfering with ownership and possession of the respondent-plaintiff over the suit land or raising any construction in any manner thereupon. The learned Additional District Judge apparently was influenced by the entry in the revenue record with respect to the ownership and possession of the respondent qua the suit land. The following observations in the impugned order reflect the mind of the learned Additional District Judge and I quote:-

> "To my mind the mere fact that the revenue record is showing suit land in the ownership and possession of the plaintiff is sufficient in itself to make out a prima-facie case for grant of injunction in favour of the plaintiff."

Thereafter in the course of the order, the learned Additional District Judge did refer to the plea of the petitioner about the nature of the suit land being recorded in the revenue record as Gair Mumkin Rasta and Gair Mumkin Kuhal yet he negatived this plea by holding that the petitioner-defendant did not acquire the right to use the suit land for passage in any other way.

It is contended by the learned counsel for the petitioner that in an earlier lis initiated at the instance of the respondent against another set of defendants, with respect to the suit land the temporary injunction application was dismissed by the trial Court in that suit and the appeal taken out their against the same was also rejected by the learned Additional District Judge. A copy of the order dated 8th March, 2006 passed by the learned Additional District Judge in the appeal case arising out of the other suit has been annexed which does show that the trial Court as well as the appeal Court in the aforesaid other suit did record a finding in the temporary injunction application that the suit land was being used as Gair

Mumkin Rasta and Gair Mumkin Kuhal and, therefore, the persons using the same had a right of passage.

In view of the aforesaid, I do feel that the learned Additional District Judge by passing the impugned order has wrongly restrained the petitioner from the use of the suit land limited to the right of passage. The petition accordingly is allowed. The impugned order is set aside but without any order as to costs.

The petition is disposed of.

CMPs No.607/2007 & 495/2007.

In view of the disposal of the main petition, both the applications shall stand disposed of.

8th October, 2007. (V.K. Gupta), C.J.
(tr)